

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

PROGRESSIVE AMERICAN INSURANCE  
COMPANY,

Plaintiff,

**v.**

CAROL THORN, JOLEEN LEEA COLON;  
DALE EUGENE KIRKINDOLL; ELIZABETH S.  
KIRKINDOLL; THOMAS HOLT  
KIRKINDOLL; JAMES W. GRIFFIN; SANDRA  
L. GRIFFIN; PATRICK A. BELT;  
CHRISTOPHER B. BELT; GENE STEGMAIER;  
ESTATE OF WILLIAM R KLAUSS, a deceased  
minor, LV STABLE MEMORIAL HOSPITAL;  
DRPT. LAKE REHABILITATION CENTER;  
BUTLER COUNTY EMERGENCY MEDICAL  
SERVICES.

CIVIL ACTION NO: 2:06cv 717-ID

Defendants.

**DEFENDANTS, DALE KIRKINDOLL, ELIZABETH KIRKINDOLL,  
AND THOMAS HOLT KIRKINDOLL’S MOTION FOR SUMMARY JUDGMENT**

COME NOW the above referenced Defendants and moves the Court for summary judgment in their behalf on the following grounds:

1. Each of the Defendants were injured in the automobile accident forming the basis of Plaintiff's Interpleader;
2. Plaintiff has tendered \$100,000.00 into Court to be paid to the covered persons;
3. No other Defendants named have appeared claiming the monies;

4. The above referenced Defendants are entitled to the full policy limits in the amount of \$50,000.00 per person/\$100,000.00 per accident;
5. As a matter of law Defendant Dale Kirkindoll is entitled to \$50,000.00;
6. As a matter of law Defendant Elizabeth Kirkindoll is entitled to \$20,000.00;
7. As a matter of law Defendant Holt Kirkindoll is entitled to \$30,000.00.

This motion is based upon the affidavits attached hereto and incorporated herewith.

Respectfully submitted,

JACKSON, FOSTER & GRAHAM, LLC  
Post Office Box 2225  
Mobile, AL 36652  
251-433-6699  
251-433-6127

BY: /s/ SIDNEY W. JACKSON, III  
SIDNEY W. JACKSON, III(JAC024)  
MATHEW B. RICHARDSON (RIC050)

#### CERTIFICATE OF SERVICE

I hereby certify that I have on this day 3<sup>rd</sup> of April, 2007, served a copy of the foregoing pleading with te Clerk of the Court using the CM/CEF system which will send notification of such filing to the following:

R. Larry Bradford, Esq.  
BRADFORD & SEARS  
2020 Canyon Road  
Birmingham, AL 35216

Christopher L. Whittington, Esq.  
WHITTINGTON & REYNOLDS  
P.O. Box 3035  
Baton Rouge, LA 70821-3035

/s/ SIDNEY W.JACKSON, III

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S. KIRKINDOLL; THOMAS HOLT  
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L. GRIFFIN; PATRICK A. BELT;  
CHRISTOPHER B. BELT; GENE  
STEGMAIER; ESTATE OF WILLIAM R  
KLAUSS, a deceased minor, LV STABLE  
MEMORIAL HOSPITAL; DRPT. LAKE  
REHABILITATION CENTER; BUTLER  
COUNTY EMERGENCY MEDICAL  
SERVICES.

Defendants.

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CIVIL ACTION NUMBER:

AFFIDAVIT OF DALE EUGENE KIRKINDOLL

My name is Dale Eugene Kirkindoll. I am 48 years of age and competent to give this affidavit. The facts set forth below are based upon my personal knowledge.

1. I understand this affidavit is made in support of our Motion for Summary Judgment.
2. On 12/26/04 I was involved an auto accident while traveling north on Interstate 65 in Butler County, Alabama.
3. As I proceeded northbound, a south bound vehicle unexpected crossed the median of the interstate and came into my lane of travel. Though I attempted to avoid said vehicle, I struck the vehicle and another vehicle that was also heading northbound.

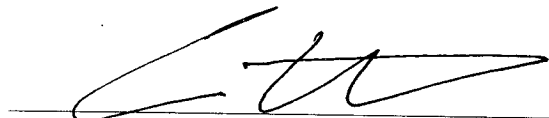
4. As a result of the collision I suffered the following injuries:
  - (a) a shoulder injury requiring surgery and physical therapy;
  - (b) soft tissue injuries to the neck;
  - (c) post traumatic stress disorder relating to the tragic event.
5. As a result of my physical injuries I missed 85 days of work at the East Baton Rouge School System from January 23, 2005 through May 19, 2005.
6. I did everything in my power to avoid this collision, but it was inevitable.
7. My son Thomas Holt Kirkindoll and my wife Elizabeth Kirkindoll were passengers in the automobile in which I was driving on this date.
8. If the Court grants our Motion for Summary Judgment, I understand and agree that the proceeds of the \$100,000.00 Progressive Insurance policy will be apportioned as follows:
  - (a) \$50,000.00 to myself
  - (b) \$20,000.00 to my wife, Elizabeth Kirkindoll
  - (c) \$30,000.00 to my son, Thomas Holt Kirkindoll.

Further Affiant sayeth not

  
DALE EUGENE KIRKINDOLL

STATE OF LOUISIANA )  
PARISH OF EBR )

SWORN TO and subscribed before me, by Dale Eugene Kirkindoll on this the 26<sup>th</sup> day of March, 2007.



NOTARY PUBLIC

My Commission expires: @ death

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COMPANY,

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**V.**

CAROL THORN; JOLEEN LEEA COLON;  
DALE EUGENE KIRKINDOLL; ELIZABETH  
S. KIRKINDOLL; THOMAS HOLT  
KIRKINDOLL; JAMES W. GRIFFIN; SANDRA  
L. GRIFFIN; PATRICK A. BELT;  
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KLAUSS, a deceased minor, LV STABLE  
MEMORIAL HOSPITAL; DRPT. LAKE  
REHABILITATION CENTER; BUTLER  
COUNTY EMERGENCY MEDICAL  
SERVICES.

Defendants.

[illegible]

CIVIL ACTION NUMBER:

AFFIDAVIT OF ELIZABETH KIRKINDOLL

My name is Elizabeth Kirkindoll. I am 48 years of age and competent to give this affidavit. The facts set forth below are based upon my personal knowledge.

1. I understand this affidavit is made in support of our Motion for Summary Judgment.
2. On 12/26/04 I was a passenger in a vehicle driven by my husband Dale Kirkindoll. As a result of the collision I was injured as follows:
  - (c) Cracked sacrum;
  - (d) Four cracked ribs;

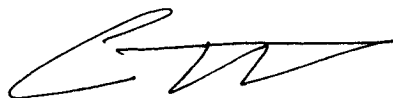
- (c) Two broken bones in my foot.
- 3. At the time of the accident, I was employed by Blackwater United Methodist Church and an establishment called Curves. I lost several months of work as a result of my injuries.
- 4. I understand and agree that if the Court grants our Motion for Summary Judgment the \$100,000.00 Progressive Insurance monies will be apportioned as follows:
  - (a) \$20,000.00 to myself
  - (b) \$50,000.00 to my husband Dale Kirkindoll
  - (c) \$30,000.00 to my son Thomas Holt Kirkindoll.

Further Affiant sayeth not

  
ELIZABETH KIRKINDOLL

STATE OF LOUISIANA  
PARISH OF EBK )

SWORN TO and subscribed before me, by Elizabeth Kirkindoll on this the 28<sup>th</sup> day of March, 2007.

  
NOTARY PUBLIC  
My Commission expires: @ death



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KIRKINDOLL; JAMES W. GRIFFIN; SANDRA  
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STEGMAIER; ESTATE OF WILLIAM R  
KLAUSS, a deceased minor, LV STABLE  
MEMORIAL HOSPITAL; DRPT. LAKE  
REHABILITATION CENTER; BUTLER  
COUNTY EMERGENCY MEDICAL  
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Defendants.

CIVIL ACTION NUMBER:

AFFIDAVIT OF THOMAS HOLT KIRKINDOLL

My name is Thomas Holt Kirkindoll. I am 20 years of age and competent to give this affidavit. The facts set forth below are based upon my personal knowledge.

1. I understand this affidavit is made in support of our Motion for Summary Judgment.
2. I was a passenger in a vehicle driven by my father on 12/26/04 that was involved in a collision with a car that crossed the median of the interstate. As a result of the collision, I sustained the following injuries:
  - (a) A concussion;
  - (b) A fractured tooth;

- (c) A laceration on my head requiring several staples.
2. I was not employed at the time so, therefore I have sustained no lost wages.
3. I understand that if the Court grants this Motion for Summary Judgment I agree and understand that the \$100,000.00 Progressive Insurance monies will be apportioned as follows:
- (a) \$30,000.00 to myself
- (b) \$50,000.00 to my father, Dale Kirkindoll
- (c) \$20,000.00 to my mother, Elizabeth Kirkindoll.

Further Affiant sayeth not

  
THOMAS HOLT KIRKINDOLL

STATE OF LOUISIANA )  
PARISH OF EBR )

SWORN TO and subscribed before me, by Thomas Holt Kirkindoll on this the 28<sup>th</sup> day of March, 2007.

  
NOTARY PUBLIC

My Commission expires

@ death